Appendix A

United States Court of Appeals
for the Ninth Circuit

Harold Yanow, Appellant, vs. Weyerhaeuser Steamship Company, a corporation, Appellee.	No. 15,452 Nov. 21, 1957

Appeal from the United States District Court
for the District of Oregon

Before: DENMAN, Senior Circuit Judge and BARNES and HAMLEY, Circuit Judges

DENMAN, Senior Circuit Judge:

Yanow appeals from a judgment in a jury-tried case holding that the steamship company is not liable for injuries he alleged he received by slipping on grease on the deck of the steamship company's steamship, the W. H. PEABODY.

The evidence shows that Yanow was working as a longshoreman at Coos Bay, Oregon, on August 1, 1954, aboard appellee's vessel the W. H. PEABODY, a 10,000 ton Liberty Ship. The gang he was working with was engaged

in stowing the deck load of lumber at No. 2 hatch. This involved moving loads of lumber on rollers into position where the men were working to build up the level of the "floor". A load of lumber had just been landed and appellant needed a peavey to facilitate his work. He went to get one behind the No. 2 port winch and there is strong testimony, if it be believed, that as he walked by the winch he slipped on a "blob of grease" and fell, striking his back on part of the winch on the way down.

As a result of this fall, there is evidence that the appellant aggravated a previous back condition and sustained a bruised back, a bumped head, and had the wind knocked out of him.

There was no direct proof of how the grease got on the deck near the winch, but it might be inferred from the evidence that it came from lubrication of the winch or from a coiled wire fall which was on the deck between the winch and the deckhouse.

There is no question that there was evidence warranting a verdict for Yanow for it is now a long established law that a shipowner is liable to a stevedore loading its vessel if it be unseaworthy as to its decks by the presence thereon of sufficient oil or grease to make it slippery to one walking over it, and the stevedore is injured thereby. The liability exists although the shipowner has no knowledge of the presence of the oil or grease. The Osceola, 189 U.S. 158; Seas Shipping Co. v. Sieracki, 328 U.S. 25.

Yanow contends that two erroneous instructions given and a refusal to give a requested instruction so prejudiced his case with the jury that he is entitled to a new trial.

The first instruction complained of is obviously wrong since Yanow's contention was that unseaworthiness could create liability without "fault of anyone." It is:

> "Just because an accident happened does not mean that, under the rules of law, there is any liability upon the Weyerhaeuser Steamship Company. In other words, the mere happening of an accident does not entitle the plaintiff to prevail in the absence of a breach of duty on the part of the defendant which caused or contributed to the injuries which plaintiff sustained. There are such things as unavoidable accident—*accidents which happen without the fault of anyone*—and if you determine that such is the case here, *then your deliberations will be at an end*, and your verdict must be for the defendant even though the plaintiff was injured." [Emphasis added.]

After this instruction on unavoidable accident had been given to the jury, the attorneys repaired to the court's chambers where the following occurred:

> "Mr. Peterson: Plaintiff excepts to the court's instruction to the jury, in substance, that if this was an unavoidable accident the plaintiff cannot recover. The point of my exception is that the unavoidable accident instruction in this kind of a situation is completely beside any issue in the case.
>
> "The Court: Is that true? Do you think that unavoidable accident should be given?
>
> "Mr. Lister: Well, Your Honor, I think as part of it that, technically, unavoidable accident would be the terminology, but I don't see the point you are making.
>
> "The Court: I am just asking; and if you want to delete it, I will delete it.

"Mr. Lister: No.
"The Court: Very well."

Pertinent to this instruction are the facts that the trial occupied the whole day. The transcription shows that the case went to the jury late in the afternoon after 104 pages of testimony had been given and 20 exhibits introduced since the luncheon recess, 62 pages being of complicated opposing expert evidence by physicians describing the extent of Yanow's injuries, a matter relative to the amount of his damages. The wrongful opening instruction was followed by instruction covering the extent of 12 pages of the printed transcript.

In this situation the statement "then your deliberations will be at an end" gave an easy out for the jurors to escape from the possibility of being locked up for the night and the certainty of a long session over the evidence of damages, if they were forced to consider the evidence of the cause thereof.

With the insistence of the shipowner that the instruction must be given over the objection of Yanow, we hold that the effect of this instruction was not cured by other statements in the instructions.

Since the case may be retried and it is likely that the same questions may arise as to the plaintiff's refused instruction and the other instruction excepted to, they are here considered. The court gave the following instructions:

> "You have heard the testimony and the other evidence, and I leave it to you to determine whether plaintiff has proved by a preponderance of the evi-

dence that oil and grease were permitted to collect on the deck forward of the port winch at No. 2 hatch and whether the quantity of oil and grease, if any, that was permitted to collect rendered the vessel unseaworthy."

The Court refused appellant's requested instruction No. 6:

Requested Instruction No. 6

"In this case if you find that there was oil and grease collected on the deck forward of the port winch at Hatch No. 2, or that the topping lift wire for the port boom at Hatch No. 2 was not kept secured, then you will find the steamship SS W. H. Peabody unseaworthy. If you further find that plaintiff was injured as a proximate and contributing result of the unseaworthiness of the vessel, then your verdict will be in favor of the plaintiff and against the defendant corporation."

Counsel for appellant made his objections as follows:

"Plaintiff further excepts to the Court's failure to give Plaintiff's Requested Instruction No. 6, which is an instruction that if they find that there was oil and grease collected on the deck forward of the port winch at Hatch No. 2, and I have also put in there that if they find that the topping lift wire for the port boom at Hatch No. 2 was not kept secured, then they are to find the steamship SS W. H. Peabody unseaworthy.

"The plaintiff excepts to the Court's failure to instruct the jury either as to the grease and oil on the deck or the unsecured topping lift."

So far as concerns the topping lift wire the court properly stated that it was not shown to have contributed to the injury to Yanow. The sentence, "In this case if you find that there was oil and grease collected on the deck forward of the port winch at Hatch No. 2 . . . then you will find the Steamship W. H. Peabody unseaworthy" does not state the law since under this sentence any amount of grease however slight would constitute unseaworthiness. The court's instruction quoted above is properly based on "the quantity of oil and grease."

The judgment is reversed.

(Endorsed:) Opinion. Filed Nov. 27, 1957.

Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

Harold Yanow, Appellant, vs. Weyerhaeuser Steamship Company, a corporation, Appellee.	No. 15,452

JUDGMENT

Appeal from the United States District Court for the District of Oregon.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Oregon, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is reversed, with costs in favor of the Appellant and against the Appellee.

It is further ordered and adjudged by this Court, that the Appellant recover against the Appellee for his costs herein expended and have execution therefor.

(Endorsed) Judgment

Filed and entered: November 21, 1957.

Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, January 17, 1958

Before: Denman, Barnes & Hamley, Circuit Judges

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court, it is ordered that the petition of Appellee, filed December 23, 1957, and within time allowed therefor by rule of Court for a rehearing of the above cause, be, and hereby is denied.

United States Court of Appeals
for the Ninth Circuit

Harold Yanow, Appellant, vs. Weyerhaeuser Steamship Company, a corporation, Appellee.	No. 15,452

Before: DENMAN, BARNES and HAMLEY, Circuit Judges

DENMAN, Circuit Judge:

IT IS ORDERED that our opinion of November 21, 1957 and the judgment therein be set aside and the following opinion and its decision be filed.

This case was transferred from the Circuit Court of the State of Oregon, County of Multnomah, to the United States District Court for the State of Oregon on the verified petition of the Weyerhaeuser Steamship Company, of which we take judicial notice, alleging as follows:

"At all times during July, 1954, and at all times since then defendant was and now is a corporation organized and existing exclusively pursuant to the laws of the State of Delaware and on July 31, 1954, petitioner was and at all times since has been and now is exclusively a citizen of the State of Delaware. Petitioner was not at any time hereinabove mentioned nor is it now a citizen of the State of Oregon.

"That at all times hereinabove mentioned plaintiff, Harold Yanow, was and now is a citizen and resident of and domiciled in the State of Oregon."

Plaintiff Yanow appeared and moved for a jury trial thereby accepting as true the allegations creating the diversity jurisdiction.

He appeals from a judgment in which the verdict held the steamship company not to be liable for injuries he alleged he received by slipping on grease on the deck of the steamship company's steamship, the W. H. PEABODY. He complied with Fed. R. Civ. P. 75(d) in stating his points on appeal.

It is further ordered that the remainder of our opinion is that of November 21, 1957, after the first paragraph thereof save that the last sentence of the paragraph beginning second on page two is amended to read as follows: "The liability exists although the shipowner has no knowledge of the presence of the oil or grease. The Osceola, 189 U.S. 158; Seas Shipping Co. v. Sieracki, 328 U.S. 85; Boudoin v. Lykes Bros. S.S. Co., 348 U.S. 336, 340. Since Yanow was injured on the ship on navigable waters, his rights are determined by maritime and not state law. Pope and Talbot v. Hawn, 346 U.S. 406, 409.[1]"

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[1]In the recent case of Kerman v. American Dredging Co., ___ U.S. ___, No. 34, decided February 3, 1958 the court declined to pass on the contention that unseaworthiness causing the death of a seaman creates liability in the ship or owners, four of the dissenting judges stating that such unseaworthiness created no liability for death. Eight of the justices in the Boudoin case sat in the Kerman case. No mention is made of The Osceola, Sieracki and Boudoin cases recognizing such liability for personal injury of the seaman and stevedore. We do not regard the Kerman decision on the liability for death as affecting the Supreme Court cases recognizing the liability for personal injury from unseaworthiness.

As above provided, the opinion is to be printed in full and judgment entered thereon.

/S/ William Denman
/S/ Stanley N. Barnes
/S/ Frederick G. Hamley
Circuit Judges

(Endorsed:) Filed Feb. 21, 1958.
Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

Harold Yanow, Appellant, vs. Weyerhaeuser Steamship Company, Appellee.	No. 15,452

JUDGMENT

APPEAL from the United States District Court for the District of Oregon.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Oregon and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed with costs in favor of the appellant and against the appellee.

It is further ordered and adjudged by this court, that the appellant recover against the appellee for his costs herein expended, and have execution therefor.

Filed and entered February 21, 1958.

United States Court of Appeals
For the Ninth Circuit

Harold Yanow,
Appellant,
vs.
Weyerhaeuser Steamship Company,
a corporation,
Appellee.

No. 15,452
Nov. 21, 1957
as amended
Feb. 21, 1958

Appeal from the United States District Court
for the District of Oregon

Before: DENMAN, Senior Circuit Judge and BARNES and HAMLEY, Circuit Judges

DENMAN, Senior Circuit Judge:

This case was transferred from the Circuit Court of the State of Oregon, County of Multnomah, to the United States District Court for the State of Oregon on the verified petition of the Weyerhaeuser Steamship Company, of which we take judicial notice, alleging as follows:

> "At all times during July, 1954, and at all times since then defendant was and now is a corporation organized and existing exclusively pursuant to the laws of the State of Delaware and on July 31, 1954, petitioner was and at all times since has been and now is exclusively a citizen of the State of Delaware. Petitioner was not at any time hereinabove mentioned nor is it now a citizen of the State of Oregon.

> "That at all times hereinabove mentioned plaintiff, Harold Yanow, was and now is a citizen and resident of and domiciled in the State of Oregon."

Plaintiff Yanow appeared and moved for a jury trial thereby accepting as true the allegations creating the diversity jurisdiction.

He appeals from a judgment in which the verdict held the steamship company not to be liable for injuries he alleged he received by slipping on grease on the deck of the steamship company's steamship, the W. H. PEABODY. He complied with Fed. R. Civ. P. 75(d) in stating his points on appeal.

The evidence shows that Yanow was working as a longshoreman at Coos Bay, Oregon, on August 1, 1954, aboard appellee's vessel the W. H. PEABODY, a 10,000 ton Liberty Ship. The gang he was working with was engaged in stowing the deck load of lumber at No. 2 hatch. This involved moving loads of lumber on rollers into position where the men were working to build up the level of the "floor". A load of lumber had just been landed and appellant needed a peavey to facilitate his work. He went to get one behind the No. 2 port winch and there is strong testimony, if it be believed, that as he walked by the winch he slipped on a "blob of grease" and fell, striking his back on part of the winch on the way down.

As a result of this fall, there is evidence that the appellant aggravated a previous back condition and sustained a bruised back, a bumped head, and had the wind knocked out of him.

There was no direct proof of how the grease got on the deck near the winch, but it might be inferred from the evidence that it came from lubrication of the winch or from a coiled wire fall which was on the deck between the winch and the deckhouse.

There is no question that there was evidence warranting a verdict for Yanow for it is now a long established law that a shipowner is liable to a stevedore loading its vessel if it be unseaworthy as to its decks by the presence thereon of sufficient oil or grease to make it slippery to one walking over it, and the stevedore is injured thereby. The liability exists although the shipowner has no knowledge of the presence of the oil or grease. The Osceola, 189 U.S. 158; Seas Shipping Co. v. Sieracki, 328 U.S. 85; Boudoin v. Likes Bros, S.S. Co., 348 U.S. 336, 340. Since Yanow was injured on the ship on navigable waters, his rights are determined by maritime and not state law. Pope and Talbot v. Hawn, 346 U.S. 406, 409.[1]

Yanow contends that two erroneous instructions given and a refusal to give a requested instruction so prejudiced his case with the jury that he is entitled to a new trial.

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[1]In the recent case of Kernan v. American Dredging Co., ___ U.S. ....., No. 34, decided February 3, 1958 the court declined to pass on the contention that unseaworthiness causing the *death* of a seaman creates liability in the ship or owners, four of the dissenting judges stating that such unseaworthiness created no liability for *death*. Eight of the justices in the Boudoin case sat in the Kernan case. No mention is made of The Osceola, Sierecki and Boudoin cases recognizing such liability for *personal injury* of the seaman and stevedore. We do not regard the Kernan decision on the liability for death as affecting the Supreme Court cases recognizing the liability for personal injury from unseaworthiness.

The first instruction complained of is obviously wrong since Yanow's contention was that unseaworthiness could create liability without "fault of anyone." It is:

> "Just because an accident happened does not mean that, under the rules of law, there is any liability upon the Weyerhaeuser Steamship Company. In other words, the mere happening of an accident does not entitle the plaintiff to prevail in the absence of a breach of duty on the part of the defendant which caused or contributed to the injuries which plaintiff sustained. There are such things as unavoidable accidents—*accidents which happen without the fault of anyone*—and if you determine that such is the case here, *then your deliberations will be at an end,* and your verdict must be for the defendant even though the plaintiff was injured." [Emphasis added.]

After this instruction on unavoidable accident had been given to the jury, the attorneys repaired to the court's chambers where the following occurred:

> "Mr. Peterson: Plaintiff excepts to the court's instruction to the jury, in substance, that if this was an unavoidable accident the plaintiff cannot recover. The point of my exception is that the unavoidable accident instruction in this kind of a situation is completely beside any issue in the case.
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> "The Court: Is that true? Do you think that unavoidable accident should be given?
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> "Mr. Lister: Well, your Honor, I think as a part of it that, technically, unavoidable accident would be the terminology, but I don't see the point you are making.
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> "The Court: I am just asking; and if you want to delete it, I will delete it.

"Mr. Lister: No.
"The Court: Very well."

Pertinent to this instruction are the facts that the trial occupied the whole day. The transcript shows that the case went to the jury late in the afternoon after 104 pages of testimony had been given and 20 exhibits introduced since the luncheon recess, 62 pages being of complicated opposing expert evidence by physicians describing the extent of Yanow's injuries, a matter relative to the amount of his damages. The wrongful opening instruction was followed by instruction covering the extent of 12 pages of the printed transcript.

In this situation the statement "then your deliberations will be at an end" gave an easy out for the jurors to escape from the possibility of being locked up for the night and the certainty of a long session over the evidence of damages, if they were forced to consider the evidence of the cause thereof.

With the insistence of the shipowner that the instruction must be given over the objection of Yanow, we hold that the effect of this instruction was not cured by other statements in the instructions.

Since the case may be retried and it is likely that the same questions may arise as to the plaintiff's refused instruction and the other instructions excepted to, they are here considered. The court gave the following instructions:

"You have heard the testimony and the other evidence, and I leave it to you to determine whether plaintiff has proved by a preponderance of the evi-

dence that oil and grease were permitted to collect on the deck forward of the port winch at No. 2 hatch and whether the quantity of oil and grease, if any that was permitted to collect rendered the vessel unseaworthy."

The Court refused appellant's requested instruction No. 6:

Requested Instruction No. 6.

"In this case if you find that there was oil and grease collected on the deck forward of the port winch at Hatch No. 2, or that the topping lift wire for the port boom at Hatch No. 2 was not kept secured, then you will find the steamship SS W. H. Peabody unseaworthy. If you further find that plaintiff was injured as a proximate and contributing result of the unseaworthiness of the vessel, then your verdict will be in favor of the plaintiff and against the defendant corporation."

Counsel for appellant made his objections as follows:

"Plaintiff further excepts to the Court's failure to give Plaintiff's Requested Instruction No. 6, which is an instruction that if they find that there was oil and grease collected on the deck forward of the port winch at Hatch No. 2, and I have also put in there that if they find that the topping lift wire for the port boom at Hatch No. 2 was not kept secured, then they are to find the steamship SS W. H. Peabody unseaworthy.

"The plaintiff excepts to the Court's failure to instruct the jury either as to the grease and oil on the deck or the unsecured topping lift."

So far as concerns the topping lift wire the court properly stated that it was not shown to have contributed to

the injury to Yanow. The sentence, "In this case if you find that there was oil and grease collected on the deck forward of the port winch as Hatch No. 2 . . . then you will find the Steamship SS W. H. Peabody unseaworthy" does not state the law since under this sentence any amount of grease however slight would constitute unseaworthiness. The court's instruction quoted above is properly based on "the quantity of oil and grease."

The judgment is reversed.

(Endorsed:) Opinion. Filed Nov. 21, 1957, as amended by order of Feb. 21, 1958.

Paul P. O'Brien, Clerk.

Appendix B

1. PERTINENT PARTS OF UNITED STATES CONSTITUTION.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

[U. S. Const., Art. I, Sec. 1.]

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be considered, and if approved by two thirds of that House, it shall become a Law.

[U.S. Const., Art. I, Sec. 7, cl. 2.]

The Congress shall have Power

To regulate Commerce with foreign Nations, and among the several States and with the Indian Tribes;

To constitute Tribunals inferior to the Supreme Court;

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

[U.S. Const., Art. I, Sec. 8, clauses 3, 9, 18.]

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

[U.S. Const., Art. II, Sec. 2, cl. 2.]

The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their continuance in Office.

[U.S. Const., Art III, Sec. 1.]

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between

a State and Citizens of another State; between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

[U.S. Const., Art. III, Sec. 2, clauses 1, 2.]

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

[U.S. Const., Art. IV, Sec. 2, cl. 1.]

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

[U.S. Const., Art. IV, Sec. 4.]

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made or which shall be made, under the Authority of the United States shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

. . . and all . . . judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; . . .

[U.S. Const., Art. VI, clauses 2, 3.]

No person shall be . . . deprived of . . . property, without due process of law; . . .

[U.S. Const., Amendment 5.]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

[U.S. Const., Amendment 7.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

[U.S. Const., Amendment 9.]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[U.S. Const., Amendment 10.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[U.S. Const., Amendment 14, Sec. 1.]

2. STATUTORY PROVISIONS.

(a) There shall be in each circuit a court of appeals, which shall be a court of record, known as the United States Court of Appeals for the circuit.

(b) Each court of appeals shall consist of the circuit judges of the circuit in active service. The circuit justice and justices or judges designated or assigned shall also be competent to sit as judges of the court. June 25, 1948, c. 646, 62 Stat. 870; Title 28, U.S. Code, § 43.

(a) Circuit judges shall sit on the court and its divisions in such order and at such times as the court directs.

(b) In each circuit the court may authorize the hearing and determination of cases and controversies by separate divisions, each consisting of three judges. Such divisions shall sit at the times and places and hear the cases and controversies assigned as the court directs.

(c) Cases and controversies shall be heard and determined by a court or division of not more than three judges, unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in active service. A court in banc shall consist of all active circuit judges of the circuit.

(d) A majority of the number of judges authorized to constitute a court or division thereof, as provided in paragraph (c), shall constitute a quorum. June 25, 1948, c. 646, 62 Stat. 871; Title 28, § 46, U. S. Code.

(a) Any retired Chief Justice of the United States or associate justice of the Supreme Court may be designated and assigned by the Chief Justice of the United States to perform such judicial duties in any circuit, in-

cluding those of a circuit justice, as he is willing to undertake.

(b) Any retired circuit or district judge may be designated and assigned to perform such judicial duties in any circuit as he is willing to undertake. Designation and assignment of such judge for service within his circuit shall be made by the chief judge or judicial council of the circuit. Designation and assignment for service elsewhere shall be made by the Chief Justice of the United States.

(c) Any retired judge of any other court of the United States may be called upon by the chief judge of such court to perform such judicial duties in such court as he is willing to undertake.

(d) No retired justice or judge shall perform judicial duties except when designated and assigned. June 25, 1948, c. 646, 62 Stat. 901; Title 28, § 294, U.S. Code.

No designation and assignment shall be made without the consent of the chief judge or judicial council of the circuit from which a judge is to be designated and assigned.

All designations and assignments of justices and judges shall be filed with the clerks and entered on the minutes of the courts from and to which made.

The Chief Justice of the United States, a circuit justice or a chief judge of a circuit may make new designations and assignments in accordance with the provisions of this chapter, and may revoke those previously made by him. June 25, 1948, c. 646, 62 Stat. 901; Title 28, § 295, U. S. Code.

Any justice or judge of the United States appointed to hold office during good behavior who resigns after attaining the age of seventy years and after serving at least ten years continuously or otherwise shall, during the remainder of his lifetime, continue to receive the salary which he was receiving when he resigned.

Any justice or judge of the United States appointed to hold office during good behavior may retain his office but retire from regular active service after attaining the age of seventy years and after serving at least ten years continuously or otherwise. He shall, during the remainder of his lifetime, continue to receive the salary of the office.

The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires. June 25, 1948, c. 646, 62 Stat. 903; Title 28, § 371, U.S. Code.

A justice or judge shall discharge, during the period of his designation and assignment, all judicial duties for which he is designated and assigned. He may be required to perform any duty which might be required of a judge of the court or district or circuit to which he is designated and assigned.

Such justice or judge shall have all the powers of a judge of the court, circuit or district to which he is designated and assigned, except the power to appoint any person to a statutory position or to designate permanently a depository of funds or a newspaper for publication of legal notices. June 25, 1948, c. 646, 62 Stat. 901; Title 28, § 296, U. S. Code.

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, _____ _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God." June 25, 1948, c. 646, 62 Stat. 907; Title 28, § 453, U. S. Code.

If the first and second officers under the master or a majority of the crew of any vessel bound on any voyage shall, before the vessel shall have left the harbor, discover that the vessel is too leaky or is otherwise unfit in her crew, body, tackle, apparel, furniture, provisions, or stores to proceed on the intended voyage, and shall require such unfitness to be inquired into, the master shall, upon the request of the first and second officers under the master or such majority of the crew, forthwith apply to the judge of the district court of that judicial district, if he shall there reside, or if not, to some justice of the peace of the city, town, or place for the appointment of surveyors, as provided in section 654 of this title, taking with him two or more of the crew who shall have made such request; and any master refusing or neglecting to comply with these provisions shall be liable to a penalty of $500. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4556; Dec. 21, 1898, c. 28, §§ 7, 26, 30 Stat. 757, 764; Title 46, U. S. Code, § 653.

The judge or justice, in a domestic port, shall, upon such application of the master or commander, issue his receipt, directed to three persons in the neighborhood, the most experienced and skillful in maritime affairs that can be procured; and whenever such complaint is about the provisions one of such surveyors shall be a physician or a surgeon of the Public Health Service, if such service is established at the place where the complaint is made. It shall be the duty of such surveyors to repair on board such vessel and to examine the same in respect to the defects and insufficiencies complained of, and make reports to the judge, or justice, as the case may be, in writing, under their hands or the hands of two of them whether in any or in what respect the vessel is unfit to proceed on the intended voyage, and what addition of men, provisions, or stores, or what repairs or alterations in the body, tackle, or apparel will be necessary; and upon such report the judge or justice shall adjudge and shall indorse on his report his judgment whether the vessel is fit to proceed on the intended voyage, and, if not, whether such repairs can be made or deficiencies supplied where the vessel then lies, or whether it is necessary for her to proceed to the nearest or most convenient place where such supplies can be made or deficiencies supplied; and the master and the crew shall, in all things, conform to the judgment. The master or commander shall, in the first instance, pay all the costs of such review, report, or judgment, to be taxed and allowed on a fair copy thereof, certified by the judge or justice. But if the complaint of the crew shall appear upon the report and judgment to have been without foundation, the master or commander,

or the owner or consignee of such vessel, shall deduct the amount thereof, and of reasonable damages for the detention, to be ascertained by the judge or justice, out of the wages of the complaining seamen. This section shall not apply to fishing or whaling vessels or yachts. R. S. § 4557; Dec. 21, 1898, c. 28, §§ 8, 26, 30 Stat. 757, 764; July 1, 1902, c. 1370, 32 Stat. 712; Aug. 14, 1912, c. 288, 37 Stat. 309; Title 46, U. S. Code, § 654.

If, after judgment that such vessel is fit to proceed on her intended voyage, or after procuring such men, provisions, stores, repairs, or alterations as may be directed, the seamen, or either of them, shall refuse to proceed on the voyage, he shall forfeit any wages that may be due him. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4558; Dec. 21, 1898, c. 28, §§ 9, 26, 30 Stat. 757, 764; Title 46, U.S. Code, § 655.

Upon a complaint in writing, signed by the first and second officers or a majority of the crew of any vessel, while in a foreign port, that such vessel is in an unsuitable condition to go to sea because she is leaky or insufficiently supplied with sails, rigging, anchors, or any other equipment, or that the crew is insufficient to man her, or that her provisions, stores, and supplies are not or have not been during the voyage sufficient or wholesome, thereupon, in any of these or like cases the consul shall cause to be appointed three persons of like qualifications with those described in section 654 of this title, who shall proceed to examine into the cause of complaint and who shall proceed and be governed in all their proceedings as provided by said section. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4559;

Dec 21, 1898, c. 28, §§ 10, 26, 30 Stat. 757, 764; Mar. 4, 1915, c. 153, § 5, 38 Stat. 1165; Title 46, U.S. Code, § 656.

The inspectors appointed by any consul, in pursuance of section 656 of this title, shall have full power to examine the vessel and whatever is aboard of her, so far as is pertinent to their inquiry, and also to hear and receive any other proofs which the ends of justice may require; and if, upon a view of the whole proceedings, the consul is satisfied therewith, he may approve the whole or any part of the report, and shall certify such approval; or if he dissents, he shall certify his reasons for dissenting. (R.S. § 4560; Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100; Title 46, U.S. Code, § 657.

The inspectors in their report shall also state whether in their opinion the vessel was sent to sea unsuitably provided in any important or essential particular, by neglect or design, or through mistake or accident; and in case it was by neglect or design, and the consular officer approves of such finding, he shall discharge such of the crew as request it, and shall require the payment by the master of one month's wages for each seaman over and above the wages then due, or sufficient money for the return of such of the crew as desire to be discharged to the nearest and most convenient port of the United States, or by furnishing the seamen who so desire to be discharged with employment on a ship agreed to by them. But if in the opinion of the inspectors the defects or deficiencies found to exist have been the result of mistake or accident, and could not, *in the exercise of ordinary care*, have been known and provided against *before* the sailing of the vessel, and the master shall in a reasonable time remove or remedy the causes of complaint, then the

crew shall remain and discharge their duty. *If any person knowingly sends or attempts to send or is party to the sending or attempting to send an American ship to sea, in the foreign or coastwise trade, in such an unseaworthy state that the life of any person is likely to be thereby endangered, he shall, in respect of each offense, be guilty of a misdemeanor, and shall be punished by a fine not to exceed $1,000 or by imprisonment not to exceed five years, or both, at the discretion of the court, unless he proves that either he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in an unseaworthy state was, under the circumstances, reasonable and justifiable,* and for the purposes of giving that proof he may give evidence in the same manner as any other witness. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4561; June 26, 1884, c. 121, § 4, 23 Stat. 54; Dec. 21, 1898, c. 28, §§ 11, 26, 30 Stat. 758, 764; Title 46, U.S. Code, § 658.

The master shall pay all such reasonable charges for inspection under such complaint as shall be officially certified to him under the hand of the consul; but in case the inspectors report that the complaint is without any good and sufficient cause, the master may retain from the wages of the complainants, in proportion to the pay of each, the amount of such charges, with such reasonable damages for detention on that account as the consul directing the inquiry may officially certify. R.S. § 4562; Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100; Title 46, U.S. Code, § 659.

Should any master or owner of any merchant vessel of the United States neglect to provide a sufficient quantity of stores to last for a voyage of ordinary duration to the port of destination, and in consequence of such neglect

the crew are compelled to accept a reduced scale, such master or owner shall be liable to a penalty as provided in section 665 of this title. R.S. § 4564; Dec. 21, 1898, c. 28, § 12, 30 Stat. 758; Title 46, U.S. Code, § 661.

Whenever on the discharge of a seaman in a foreign country by a consular officer on his complaint that the voyage is continued contrary to agreement, or that the vessel is badly provisioned or unseaworthy, or against the officers for cruel treatment, it shall be the duty of the consul or consular agent to institute a proper inquiry into the matter, and, upon his being satisfied of the truth and justice of such complaint, he shall require the master to pay to such a seaman one month's wages over and above the wages due at the time of discharge, and to provide him with adequate employment on board some other vessel, or provide him with a passage on board some other vessel bound to the port from which he was originally shipped, or to the most convenient port of entry in the United States, or to a port agreed to by the seaman. R.S. § 4583; June 26, 1884, c. 121, § 3, 23 Stat. 54; Dec. 21, 1898, c. 28, § 18, 30 Stat. 760; Title 46, U.S. Code, § 685.

It is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, insofar as may not be in-

consistent with the express provisions of this chapter, the United States Maritime Commission shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained. June 5, 1920, c. 250, § 1, 41 Stat. 988; Ex. Ord. No. 6166, § 12, June 10, 1933; June 29, 1936, c. 858, §§ 204, 904, 49 Stat. 1987, 2016; Title 46, U.S. Code, § 861.

The policy and the primary purpose declared in section 861 of this title are hereby confirmed. May 22, 1928, c. 675, § 1, 45 Stat. 689; Title 46, U.S. Code, § 891.

It is necessary for the national defense and development of the foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (b) capable of serving as a naval and military auxiliary in time of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States, insofar as may be practicable, and (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel. It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine. June 29, 1936, c. 858, Title I, § 101, 49 Stat. 1985; Title 46, U.S. Code, § 1101.